

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-004V

Filed: July 25, 2016

UNPUBLISHED

BRIANA GWENELL JONES, as
Administrator and Legal Representative
of the estate of LEANELL JONES,
deceased,

Petitioner,
v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

Joint Stipulation on Damages;
Influenza ("Flu") Vaccine; Neuropathic
Pain; Weakness in Left Shoulder and
Arm; Special Processing Unit ("SPU")

Elizabeth Martin Muldowney, Rawls, McNelis and Mitchell, P.C., for petitioner.
Heather Lynn Pearlman, U.S. Department of Justice, Washington, DC, for respondent.

DECISION ON JOINT STIPULATION¹

Dorsey, Chief Special Master:

On January 5, 2015, Leanell Jones ("Mr. Jones") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the "Vaccine Act"). The petition alleged that as a result of receiving an influenza ("flu") vaccine on October 28, 2012, Mr. Jones suffered neuropathic pain and weakness in his left shoulder and arm. Petition at 1; Stipulation, filed July 25, 2016, at ¶ 4. The petition further alleged that Mr. Jones experienced his symptoms for more than six months. Petition at 4; Stipulation at ¶ 4. "Respondent denies that the vaccine caused Mr. Jones's alleged injuries or any other injury or death." Stipulation at ¶ 6. During the pendency of the claim, Mr. Jones passed away and Briana Gwenell Jones ("petitioner")

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

was appointed administrator and legal representative of Mr. Jones's estate, and substituted as petitioner therein.

Nevertheless, on July 25, 2016, the parties filed the attached joint stipulation, stating that a decision should be entered awarding compensation. The undersigned finds the stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

The parties stipulate that petitioner shall receive the following compensation:

- a. A lump sum of \$8,545.18, representing compensation for full satisfaction of the State of California Medicaid lien, in the form of a check payable jointly to petitioner and:**

Department of Health Care Services
Recovery Branch – MS 4720
P.O. Box 997421
Sacramento, CA 95899-7421
DHCS Account No.: C97748565D-VAC09

Petitioner agrees to endorse this check to the Department of Health Care Services; and

- b. A lump sum of \$87,500.00, in the form of a check payable to petitioner.** Stipulation at ¶ 8. This amount represents compensation for all items of damages that would be available under 42 U.S.C. § 300aa-15(a). *Id.*

The undersigned approves the requested amount for petitioner's compensation. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

experienced symptoms of these injuries for more than six months.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of Mr. Jones's alleged injuries.

6. Respondent denies that the vaccine caused Mr. Jones's alleged injuries or any other injury or his death.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. a lump sum payment of \$8,545.18, representing compensation for full satisfaction of the State of California Medicaid lien, in the form of a check payable jointly to petitioner and:

Department of Health Care Services
Recovery Branch – MS 4720
P.O. Box 997421
Sacramento, CA 95899-7421
DHCS Account No.: C97748565D-VAC03

Petitioner agrees to endorse this check to the Department of Health Care Services; and

- b. a lump sum payment of \$87,500.00, in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to

42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 8 of this Stipulation, and any amounts awarded pursuant to paragraph 9 of this Stipulation, will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs and unreimbursed expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner, as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and on behalf of her heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions, causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in

the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of Mr. Jones resulting from, or alleged to have resulted from, the vaccine administered on October 18, 2012, as alleged in a petition for vaccine compensation filed on or about January 5, 2015, in the United States Court of Federal Claims as petition No. 15-04V.

14. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

15. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

16. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, *as amended*, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the vaccine received by Mr. Jones either caused or significantly aggravated Mr. Jones's alleged injuries or any other injury.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

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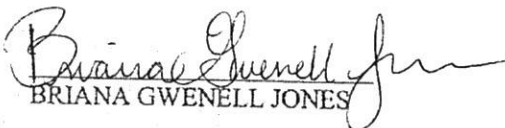
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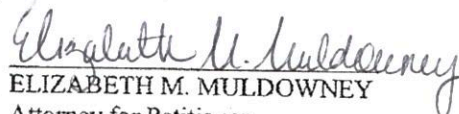
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Respectfully submitted,

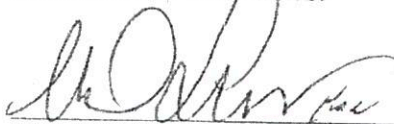
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BRIANA GWENELL JONES


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Dated: 07/25/16